

UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA

V.

Consultores De Navegacion, S.A.

JUDGMENT IN A CRIMINAL CASE

(For Organizational Defendants)

CASE NUMBER: 1: 09 CR 10049 - 001 - DPW

Allison D. Burroughs & Thomas M. Russo

Defendant Organization's Attorney

Additional documents attached ☐

THE DEFENDANT ORGANIZATION:

☒ pleaded guilty to count(s) Count 1 of the Indictment on 7/27/09☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
33:1908(a), 33:151.25	Act to Prevent Pollution from Ships/ Failure to Maintain an Oil Record Book	9/2/2007	1

The defendant organization is sentenced as provided in pages 2 through 8 of this judgment.☐ The defendant organization has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's
Federal Employer I.D. No. _____

Defendant Organization's Principal Business Address:

Madrid, Spain



Defendant Organization's Mailing Address: _____

7/27/2009

Date of Imposition of Judgment

Signature of Judge

The Honorable Douglas P. Woodlock Judge, U.S. District Court

Name of Judge

Title of Judge

Date

July 28, 2009

DEFENDANT ORGANIZATION: **Consultores De Navegacion, S.A.**
CASE NUMBER: **1: 09 CR 10049 - 001 - DPW**
PROBATION

The defendant organization is hereby sentenced to probation for a term of :

3 years to run concurrent with sentence imposed in case no. 08-cr-10274-DPW

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

"See page 3."

STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants
Sheet 2A — Probation

DEFENDANT ORGANIZATION: **Consultores De Navegacion, S.A.**
CASE NUMBER: **1: 09 CR 10049 - 001 - DPW**

Judgment—Page 3 of 8

ADDITIONAL PROBATION TERMS

Defendant shall commit no violations of U.S. federal or state law, including, but not limited to, violations of MARPOL 73/78, or federal or state environmental laws and regulations.

Defendant shall make payment in full of the monetary amounts set forth herein including all special assessments and fines. In the event the the defendant fails to to make any scheduled payment(s) and establishes to the satisfaction of the government that it is in good faith unable to to make such payment(s) as scheduled, the parties agree to move jointly to extend the payment schedule as may be necessary and to extend the period of probation to a total of five years. In the event that the defendant makes full payment of the entire fine amount plus accrued interest prior the end of such-year period, the parties agree to jointly move to terminate the organizational probation.

The defendant shall fund and implement a comprehensive Environmental Compliance plan ("ECP") during its term of probation, including any extended period of probation pursuant to Paragraph 7(C)(2), a copy of which has been filed with the U.S. Probation Office.

DEFENDANT ORGANIZATION: **Consultores De Navegacion, S.A.**Judgment — Page 4 of 8CASE NUMBER: **1: 09 CR 10049 - 001 - DPW****CRIMINAL MONETARY PENALTIES**

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$ 500,000.00	\$

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$	0.00	\$	0.00
---------------	----	------	----	------

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants
Sheet 3A — Criminal Monetary Penalties

DEFENDANT ORGANIZATION: **Consultores De Navegacion, S.A.**
CASE NUMBER: **1: 09 CR 10049 - 001 - DPW**

Judgment — Page 5 of 8

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

In this case and the companion case, 08-cr-10274-DPW, the defendant shall pay a total criminal fine in the amount of two million, eighty-three thousand, three-hundred thirty-three dollars (\$2,083,333), to be tendered by Check to "Clerk, United State District Court, District of Massachusetts." No later than 8/7/09, the defendant shall pay not less than one million dollars (\$1,000,000), to be tendered by certified check drawn on a United States bank, and thereafter shall pay the balance of the fine in not more than ten quarterly installments, commencing six months after the date of sentencing, of no less than one hundred nine thousand dollars (\$109,000) apiece, except that the final installment shall be in the amount to be determined by the Clerk of Court, and shall comprise all outstanding principal together with all accrued interest, which shall be computed at the statutory rate pursuant to 18 U.S.C. § 3612(f).

DEFENDANT ORGANIZATION: **Consultores De Navegacion, S.A.**
CASE NUMBER: **1: 09 CR 10049 - 001 - DPW**

SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C or ☐ D below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or
- C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Special instructions regarding the payment of criminal monetary penalties:

DEFENDANT SHALL PAY THE SPECIAL ASSESSMENT OF \$400.00, IMMEDIATELY.

SEE PAGE 5 FOR SCHEDULE OF PAYMENTS AS TO THE FINE.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant organization shall pay the cost of prosecution.
- ☐ The defendant organization shall pay the following court cost(s):
- ☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT ORGANIZATION: **Consultores De Navegacion, S.A.**CASE NUMBER: **1: 09 CR 10049 - 001 - DPW****STATEMENT OF REASONS**☒ The court adopts the presentence report and guideline applications **WITHOUT CHANGE.****OR**☐ The court adopts the presentence report guideline applications **BUT WITH THESE CHANGES:****Guideline Range Determined by the Court:**☐ The defendant organization is a criminal purpose organization pursuant to U.S.S.G. §8C1.1.**OR**☒ The calculation of the guideline fine range is unnecessary because the ~~defendant organization cannot pay restitution pursuant to U.S.S.G. §8C2.2(a)~~ applicable guideline concerns an environmental offense. U.S.S.G. 8C2.1 (background)**OR**

Total Offense Level: _____

Base Fine: _____

Total Culpability Score: _____

Fine Range: \$ _____ to \$ _____

☐ Disgorgement amount of \$ _____ is added to fine pursuant to U.S.S.G. §8C2.9.☐ Fine offset amount of \$ _____ is subtracted from fine pursuant to U.S.S.G. §8C3.4.☐ Fine waived or below the guideline range because of inability to pay pursuant to U.S.S.G. §8C.3.3.**RESTITUTION DETERMINATIONS**

Total Amount of Restitution: \$ _____

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).☐ For offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).☒ Restitution is not ordered for other reasons:

There is no identifiable victim.

☐ Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c) for the following reason(s):

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants
Attachment A — Statement of Reasons

DEFENDANT ORGANIZATION: **Consultores De Navegacion, S.A.**
CASE NUMBER: **1: 09 CR 10049 - 001 - DPW**

Judgment — Page 8 of 8

STATEMENT OF REASONS

☒ The sentence is within the guideline range and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

- ☐ The sentence departs from the guideline range:
- ☐ upon motion of the government, as a result of a defendant's substantial assistance, or
 - ☐ for the following specific reason(s):